

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DONNELL SMITH

Plaintiff,

vs.

RONALD E. WALKER, JR., *et al.*,

Defendants.

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CIVIL NO. 07-cv-344-DRH

MEMORANDUM AND ORDER

HERNDON, Chief Judge:

Plaintiff, an inmate at the Menard Correctional Center, brings this action for alleged deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiff seeks damage for time he spent in disciplinary segregation in alleged violation of his right to due process of law. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

(a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

THE COMPLAINT

Plaintiff was found guilty of violating prison rules concerning unauthorized movement and drugs/drug paraphernalia. For the unauthorized movement violation, Plaintiff received the following disciplinary sanctions: 2 months C-grade, 2 months segregation, and revocation of his “Peoria OTC status.” For the drug violation, Plaintiff was given the following sanctions: 6 months C-grade, 6 months segregation, 6 months loss of good conduct credits, 6 months loss of contact visits, 6 months loss of commissary privileges, and restitution of \$7.88. Plaintiff asserts that on administrative review, the time he was to spend in segregation was reduced to 4 months total. Consequently, Plaintiff claims he was entitled to be released from segregation on May 5, 2007 (4 months from the date he was charged with the violations). Plaintiff seeks damages for every day he spent in segregation after May 5, 2007.

DISCUSSION

When a plaintiff brings an action under § 1983 for procedural due process violations, he must show that the state deprived him of a constitutionally protected interest in “life, liberty, or property” without due process of law. *Zinerman v. Burch*, 494 U.S. 113, 125 (1990). Plaintiff asserts that a protected liberty interest was created when the administrative review board reduced his sanctions from 6 months segregation to 4 months segregation. But, Plaintiff’s expectancy to being released on May 5, 2007, even based on the administrative review board’s decision, does not rise to the level

on a protected liberty interest. Instead, an inmate has a due process liberty interest only if the conditions of his or her confinement impose “atypical and significant hardship...in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995). The Seventh Circuit Court of Appeals has adopted an extremely stringent interpretation of *Sandin*. In this Circuit, a prisoner in disciplinary segregation at a state prison has a liberty interest in remaining in the general prison population only if the conditions under which he or she is confined are substantially more restrictive than administrative segregation at the most secure prison in that state. *Wagner v. Hanks*, 128 F.3d 1173, 1175 (7th Cir. 1997). If the inmate is housed at the most restrictive prison in the state, he or she must show that disciplinary segregation there is substantially more restrictive than administrative segregation at that prison. *Id.* In the view of the Seventh Circuit Court of Appeals, after *Sandin* “the right to litigate disciplinary confinements has become vanishingly small.” *Id.* Indeed, “when the entire sanction is confinement in disciplinary segregation for a period that does not exceed the remaining term of the prisoner’s incarceration, it is difficult to see how after *Sandin* it can be made the basis of a suit complaining about a deprivation of liberty.” *Id.*

In the case currently before the Court, Plaintiff was on segregation for only an additional 4 days. Nothing in the complaint or exhibits suggests that the conditions that he had to endure while in disciplinary segregation were substantially more restrictive than administrative segregation in the most secure prison in the State of Illinois. Therefore, Plaintiff’s due process claim is without merit.

DISPOSITION

In summary, Plaintiff’s complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** with prejudice. Plaintiff is advised that the dismissal of this action will count as one of his three allotted “strikes” under the provisions of 28 U.S.C. § 1915(g). All pending motions

are **DENIED** as moot.

DATED: April 3, 2009.

/s/ DavidRHerndon
DISTRICT JUDGE